

**BEFORE THE  
NATURAL RESOURCES COMMISSION  
OF THE  
STATE OF INDIANA**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>ADDING 312 IAC 27, TO ASSIST WITH</b>	)	<b>Administrative Cause</b>
<b>THE IMPLEMENTATION OF THE</b>	)	<b>Number: 08-064A</b>
<b>FLOOD CONTROL REVOLVING FUND</b>	)	<b>LSA #09-199(F)</b>

**REPORT OF PUBLIC HEARING, ANALYSIS,  
AND CONSIDERATION FOR FINAL ADOPTION**

**1. Rule Processing**

For consideration is a rule proposal to add 312 IAC 27 to assist with the implementation of the Flood Control Revolving Fund, which provides low interest loans to local units of government to assist in the finance of local flood control programs.

On November September 16, 2009, the Natural Resources Commission gave preliminary to the proposed rule. A “notice of intent” to adopt the proposed rule amendment was posted to the Indiana REGISTER on April 1, 2009. The notice listed Ken Smith, Assistant Director, Division of Water, Department of Natural Resources, as the small business regulatory coordinator. No comments were received in response to this notice.

As required by Executive Order, a proposed governmental fiscal impact analysis of the rule proposal was submitted to the Office of Management and Budget on April 1, 2009. The Office of Management and Budget reviewed the fiscal analyses, and recommended in its letter filed August 4, 2009, that the “rule changes be approved.” The following is an excerpt of the fiscal analysis.

**FISCAL IMPACT ANALYSIS TO STATE AND LOCAL GOVERNMENTS**

LSA Document #09-199

**A calculation of the estimated fiscal impact on state and local government,  
including the effective date of the rule**

There will be neither a direct positive or negative fiscal impact over existing conditions to state or local government, as this rule mirrors ongoing practice, clarifies definitions

and the existing requirements as set forth by IC 14-28-5 and utilizes the same practices and definitions already recognized in agency guidelines. SB 105, passed in January of 2008, shifts the responsibility and administration of this Fund exclusively to the Natural Resources Commission. The statute change that drove these rules only redirected which agency in state government will perform several functions or procedures. It did not change the functions or procedures that need to be performed. The primary purpose of this rule adoption is to implement the legislative mandate of IC 14-28-5 and SB 104, which directed that the administrative control of the fund be vested in the Natural Resource Commission thereby dropping the State Board of Finance.

There will be a positive indirect fiscal impact to state government as any new loans created through this program will be used for job creating functions such as engineering and construction work on water resource infrastructure projects.

The rule would become effective 30 days after filing with the Publisher.

**Identification of any sources of revenue affected by the rule**

No source of revenue will be affected by this rule as this rule mirrors ongoing practice. Only the administrative function of the fund will shift solely to the Department of Natural Resources. The source of funds for any loans given in this program comes from a dedicated revolving loan fund created and funded decades ago. When local communities make payments on any loans given through this program, those revenues return to the revolving loan fund as is current statutory practice.

**Identification of any appropriation, distribution or other expenditures of revenue affected by the rule**

No additional appropriation, distribution, or other expenditures of revenue will be affected by the rule that cannot already occur. Only the administrative function of the Fund will shift solely to the Department of Natural Resources. If a local community makes a successful loan application under this existing program a distribution from the dedicated revolving loan fund will occur.

**The estimated increase or decrease in revenues or expenditures of state and local government that would result from the implementation of the rule**

There will be no increase or decrease in revenues or expenditures of state and local government that would result from the implementation of this rule. The proposed rule change will be seamless to the customer, the local governmental unit. The local unit will follow the same paper trail. The local governmental unit will see no apparent procedural change in the way the local unit secures a loan. The proposed rule mirrors ongoing business practices that a local unit follows to secure a loan through the Flood Control Revolving Fund already recognized in agency guidelines per IC 14-28-5.

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On August 20, 2009, the NRC, Division of Hearings submitted a copy of the proposed rule to the Legislative Services Agency (the "LSA") along with the associated Economic Impact

Statement (EIS). The analysis resulted in a finding that the proposed rule would not “affect” small business, and following is an excerpt of the EIS:

...

**Estimated Number of Small Businesses Subject to This Rule:**

No small business will be subject to this rule. This rule does not affect and will have no negative impact on small businesses. The Flood Control Revolving Fund was created by IC 14-28-5 in the 1950s, and intended to encourage local initiatives to solve local flooding and water resource problems. By statute, this Fund provides only to local units of government low interest loans to help finance relevant local flood control programs. By statute, this loan program can only be obtained by entities falling under the definition of *local unit* as set forth by IC 14-28-5-4. Local unit is defined as county, city, town, or special taxing district created by law such as a conservancy district. Therefore, this loan program is not available to small businesses.

...

**Estimated Total Annual Economic Impact on Small Businesses To Comply:**

There will be no annual economic impact on small business to comply with this rule.

- A. By statute, this loan program can only be used by such entities as county, city, town, or special taxing district created by law such as a conservancy district. The IDNR anticipates that no additional annual economic impact will be incurred by small business in order to comply with the proposed rule change, as it already mirrors ongoing practicing and does not impose any additional requirement on the business owner due to the fact that this rule will apply only to local units (county, city, special taxing district).
- B. No assumptions were made, and no data was used to determine the total annual economic impact of the proposed rule, as the proposed rule mirrors ongoing practice and does not apply to small business owners only local units of government.
- C. The outcome of this fund is likely to be beneficial to small businesses and local economies. The Flood Control Revolving Fund allows local governmental entities to borrow money at economical rates. Often local governmental entities will hire small business owners for professional services like engineering or construction with the funds obtained through this loan process.

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On August 24, 2009, a copy of the notice of public hearing was forwarded to LSA for posting. The proposed rule would not impose requirements or costs under IC 4-22-2-24(d)(3). Also, on August 24, 2009, the LSA issued by e-mail an “authorization to proceed” with rule adoption. As required by Ind. Code § 4-22-2.1-5, a copy of the Economic Impact Statement was forwarded to the Indiana Economic Development Corporation (the “IEDC”) for review and comment.

A public hearing was scheduled for October 5, 2009. Notice of the public hearing and the text of the proposed amendments were posted to Indiana REGISTER on September 2, 2009. This notice included the statement under Ind. Code § 4-22-2.1-5, concerning rules affecting small businesses. The notice also included information required under Ind. Code § 4-22-2-24. Notice of the public hearing with similar information was published on September 1, 2009 in the Indianapolis *Daily Star*, a newspaper of general circulation in Marion County, Indiana. In addition, notice of the public hearing and a summary of the proposed rule changes were published on the Commission's Web-based calendar. A link to the proposed rule was added to the Commission's Website in order to simplify receipt of public comment on the proposal.

## **2. Report of Public Hearing**

The public hearing was convened as scheduled on October 5, 2009. No member of the public appeared for the public hearing. No comments have been received throughout the rule amendment process.

## **3. Consideration for Final Adoption**

The Flood Control Revolving Fund was created by Ind. Code § 14-28-5 in the 1950s, and intended to encourage local initiatives to solve local flooding and water resource issues. By statute, the Fund provides low interest loans to local units of government to help finance local flood control projects. By statute, the loan program can only be obtained by entities qualifying under the definition of *local unit* as set forth by Ind. Code § 14-28-5-4. "Local unit" is defined as *county, city, town, or special taxing district created by law*, such as a conservancy district.

Since the statute's inception, the administration of the fund was vested jointly with the State Board of Finance and the Natural Resources Commission. P.L. 53-2008, which became effective March 3, 2008, shifts the responsibility and administration of the Fund exclusively to the Natural Resources Commission removing the State Board of Finance from the administration and approval procedures concerning the flood control revolving fund. With Commission delegation, the Division of Water coordinates matters regarding applications for loans from the Flood Control Revolving Fund and provides technical analysis. Statutorily, loans may not exceed \$300,000 to

any one local unit of governmental. The loan terms are a three percent interest rate and are to be repaid over ten years.

Certain types of projects qualify for a low interest loan under the Flood Control Revolving Fund, such as removal of obstructions and accumulated debris; clearing and straightening channels; channel widening; building or repairing levees or flood protective works; and construction of bank protection works. The proposed rule mirrors ongoing agency practice, clarifies definitions and existing requirements as set forth by Ind. Code § 14-28-5.

### **3. Recommendation**

It is recommended that the proposed rule adding 312 IAC 27, to assist with the implementation of the Flood Control Revolving Fund, be given final adoption as attached as Exhibit A.

Dated: October 29, 2009

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Hearing Officer  
Jennifer M. Kane  
NRC, Division of Hearings

**EXHBIT A**

**TITLE 312 NATURAL RESOURCES COMMISSION**

**Final Rule**

LSA Document #09-199(F)

**DIGEST**

Adds 312 IAC 27 to assist with the implementation of the Flood Control Revolving Fund. Effective 30 days after filing with the Publisher.

**312 IAC 27**

SECTION 1. 312 IAC 27 IS ADDED TO READ AS FOLLOWS:

**ARTICLE 27. FLOOD CONTROL REVOLVING FUND**

**Rule 1. Application and Administration**

**312 IAC 27-1-1 Application of article**

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

**Sec. 1. This article governs an activity that is controlled by IC 14-28-5.**

*(Natural Resources Commission; 312 IAC 27-1-1)*

**312 IAC 27-1-2 Administration**

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-10-2-3; IC 14-28-5

**Sec. 2. (a) The department shall administer IC 14-28-5 and this article.**

**(b) Except as provided in subsection (c) or as otherwise specified, the commission delegates authority to the director or a designate of the director to take any action that is appropriate for the implementation of IC 14-28-5 and this article.**

**(c) The commission is the ultimate authority for an agency action under IC 14-10-2-3.**

*(Natural Resources Commission; 312 IAC 27-1-2)*

**312 IAC 27-1-3 Service of applications and documents**

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5; IC 23-1-20-15

**Sec. 3. (a) This section governs service on the department of any application for a loan or other document required under the flood control program, IC 14-28-5, or this article.**

**(b) The service of a loan application or other document shall be made upon the division by any of the following:**

- (1) Personal delivery.**
- (2) United States mail under any of the following categories:**
  - (A) First class.**
  - (B) Certified.**
  - (C) Express.**
  - (D) Priority.**
- (3) Private carrier.**
- (4) Facsimile mail.**
- (5) Electronic mail.**

**(c) An application for a loan or other document is received on the earliest of the following dates:**

- (1) The date on which the document is delivered.**
- (2) The date of the postmark on the envelope containing the document if the document is sent by a category of United States mail described in subsection (b)(2) and is properly addressed.**
- (3) The date on which the document is deposited with a private carrier, as shown by receipt issued by the carrier, if the document is sent by a private carrier and is properly addressed.**
- (4) The date of receipt of the document, if the date of deposit or postmark cannot be determined.**

**(d) As used in this section, "private carrier" means a person, other than the United States Postal Service, that delivers mail as defined in IC 23-1-20-15.**

*(Natural Resources Commission; 312 IAC 27-1-3)*

## **Rule 2. Definitions**

### **312 IAC 27-2-1 Applicability**

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

**Sec. 1. The definitions contained in:**

- (1) IC 14-28-5-1 through IC 14-28-5-4;**
  - (2) 312 IAC 1; and**
  - (3) this rule;**
- apply throughout this article.**

*(Natural Resources Commission; 312 IAC 27-2-1)*

### **312 IAC 27-2-2 "Appurtenant works" defined**

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

**Sec. 2. "Appurtenant works"** means the features of a dike, levee, or other flood protective work that are reasonably required for the safe and proper operation of a structure financed, in whole or in part, through the fund. The term includes each of the following:

- (1) A spillway system.
- (2) An outlet work.
- (3) A gate or valve.
- (4) A tunnel.
- (5) A conduit.
- (6) An embankment.
- (7) A pump.
- (8) A generator or other electrical supply system.
- (9) A pumping station.
- (10) A closure structure.
- (11) A similar flood protective work.

*(Natural Resources Commission; 312 IAC 27-2-2)*

**312 IAC 27-2-3 "Division" defined**

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

**Sec. 3. "Division"** means the division of water of the department.

*(Natural Resources Commission; 312 IAC 27-2-3)*

**312 IAC 27-2-4 "State budget agency" defined**

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 4-12-1-3; IC 14-28-5

**Sec. 4. "State budget agency"** refers to the budget agency created as an agency of the state under IC 4-12-1-3.

*(Natural Resources Commission; 312 IAC 27-2-4)*

**Rule 3. Execution of the Flood Control Revolving Fund**

**312 IAC 27-3-1 Consideration of flood control revolving fund**

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5-9

**Sec. 1.** The department may loan money from the fund to a local unit if each of the following conditions are met:

- (1) The state budget agency determines the fund has sufficient available money.
- (2) The local unit submits a completed application for a loan under IC 14-28-5-9.
- (3) The local unit adequately documents a plan for and the ability to repay the loan.

A local unit that:

- (A) is seeking to borrow from the fund; and



(B) has outstanding financial commitments affecting the ability to repay the loan; shall include copies of the commitments with the application.

(4) The local unit provides an ordinance or resolution, enacted by the governing board of the local unit, that authorizes the flood control program.

(5) The local unit agrees to do each of the following:

(A) Maintain all papers, accounting records, and other documents pertaining to the flood control program for which the loan was secured.

(B) Make available at all reasonable times to the department, for inspection and copying at the offices of the local unit, the documents described in clause (A).

(C) Allow the department to conduct inspections of facilities used for instituting, accomplishing, or administering an approved flood control works.

(6) The flood control program and any appurtenant works conform to the requirements of IC 14-28-5 and this article.

*(Natural Resources Commission; 312 IAC 27-3-1)*

### **312 IAC 27-3-2 Flood control program approval**

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5-8

**Sec. 2. Upon signature by the department director or a designate of the department director approving a loan application under this rule, a flood control program is approved under IC 14-28-5-8(2).**

*(Natural Resources Commission; 312 IAC 27-3-2)*

### **312 IAC 27-3-3 Coordination between the department and the state budget agency**

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

**Sec. 3. The department shall coordinate with the state budget agency to maintain a sufficient balance in the fund.**

*(Natural Resources Commission; 312 IAC 27-3-3)*

### **312 IAC 27-3-4 Consideration of priority ratings**

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5-11

**Sec. 4. (a) The department shall consider and act upon each application for a loan in the order an application is received.**

**(b) As soon as practicable after an application is received, the department shall inform the applicant whether the application is complete.**

**(1) If the department determines an application is not complete, the applicant shall be provided at least twenty (20) days to complete the application.**

**(2) If the application is:**

**(A) resubmitted within the period provided by the department; and**

**(B) determined by the department to be complete as resubmitted;**

**the application shall be considered served on the day originally submitted.**

**(3) If the application is not:**

**(A) resubmitted within the period provided by the department; or**

**(B) deemed to be complete on resubmission;**

**the application shall be considered denied.**

**(4) A denial under this subsection does not prohibit an applicant from serving a new application for the same purpose.**

**(c) If more than one (1) application is received by the division on the same day and a sufficient balance is not present in the fund to cover each application received on this day, the department shall rank and prioritize the applications as provided in IC 14-28-5-11 and this rule as follows:**

**(1) Addressing an emergency shall be given the first priority.**

**(2) Repairing an existing facility shall be given secondary priority.**

**(3) Beginning new construction shall be given third priority.**

**(4) Proposals to fund planning, engineering, administration, or legal expenses shall be given fourth priority.**

**(5) Any other purpose shall be given fifth priority.**

**(d) The local unit seeking a loan for the highest priority shall be given first consideration under this article. If a sufficient balance remains after funding the highest priority, the department may make an additional loan or loans in the descending order of the priority ratings.**

**(e) Except as provided in this subsection, the department shall not approve a loan to a local unit to satisfy, in whole or in part, a previously existing indebtedness. A loan may be approved to satisfy indebtedness caused by repairs to existing facilities or by construction, during an emergency requiring immediate relief from actual or threatened flood damage, if the emergency occurred within one hundred eighty (180) days preceding the date of the application.**

*(Natural Resources Commission; 312 IAC 27-3-4)*

### **312 IAC 27-3-5 Report to the commission**

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

**Sec. 5. Not later than July 1 of each calendar year, the division shall provide the commission and the advisory council with an annual report summarizing the activities of the department under this article. The report shall include information concerning the status of the fund.**

*(Natural Resources Commission; 312 IAC 27-3-5)*